

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6510 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JITUDAN MORARDAN GADHVI

Versus

SURENDRANAGAR DISTRICT PANCHAYAT

Appearance:

MRS DT SHAH for Petitioner
MR HS MUNSHAW for Respondent No. 1
RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/03/2000

ORAL JUDGEMENT

Learned advocate Ms. D.T.Shah is appearing for
the petitioner. Learned advocate Mr. H.S.Munshaw is
appearing for the respondents. Brief facts leading to the

filing of the present petition are as under:

The petitioner Shri Gadhvi was appointed as daily wage driver by respondent no. 3 in the month of January, 1983 and he remained in service continuously and, thereafter, on 26th June, 1986, his service was orally terminated by the third respondent which order of termination was challenged by the petitioner before the labour court by filing reference no. 661 of 1989 and the labour court set aside said order of termination and granted reinstatement with continuity of service and with 50% of the back wages for the intervening period vide award dated 11.12.1990. Thereafter, said award passed by the labour court was challenged before this court by filing special civil application no. 1950 of 1991. This court has dismissed the said petition on 30.9.1992. While dismissing the said petition, this court had directed the respondents that if the petitioner workman is not already reinstated, he shall be reinstated within six weeks from the date of receipt of the order and has further directed for computation of the back wages for the intervening period and payment thereof within that time. Thereafter, the Union had approached the Taluka Development Officer by letter dated 22.2.1993 with a request to reinstate the petitioner workman and to pay the back wages for the intervening period in terms of the labour court's award, as per the directions of this court in aforesaid petition. Ultimately, vide order dated 1st May, 1993, the respondent has ordered that considering the working days of the driver junior to the petitioner and daily wage of Rs. 17.30, total back wages for the 645 days comes to Rs. 11,158.50 ps and fifty per cent thereof would come to Rs. 5579.25 ps. and adding amount of cost of Rs. 100/-, total amount of Rs. 5679.25 was directed to be paid but thereafter it was mentioned in the said order that one Nanubhai Amthubhai, junior to the petitioner was ordered to be removed with effect from 15.7.1992 and therefore, it was ordered that Shri Jitudan Morardan Gadhvi shall also be declared to have been terminated on and from that date and that no amount shall be required to be paid for the period after 15.7.1992. But the fact remains that from the date of the award till 15.7.1992, the respondent has not reinstated the petitioner though there was clear cut direction of the labour court as well as of this court in the petition filed by the respondents and, thereafter, the petitioner was appointed by order dated 9th June, 1993 as a daily rated driver on a tanker but thereafter, on 26th June, 1993 his services were again terminated by the respondents as per order annexure H page 36 to the petition and on 2.7.1993, the petitioner filed the

present petition for the reliefs stated in the petition. Learned advocate Ms. Shah has submitted that the payment of 50% of the back wages is not based on proper calculation and is also not in accordance with revision of pay which has taken place from time to time. She has further produced the calculation of the amount of 50% of the back wages as per annexure "F" page 34 which is a detailed statement and according to her, the petitioner is entitled to 50% of the back wages as per the said calculation at annexure "F". She has claimed the wages from 1st January, 1991 to 30th June, 1993 which comes to Rs. 25,526.00 and she has submitted that the petitioner is required to be paid the amount of back wages as per the said calculation by deducting the amount of Rs. 5679.25 which has been paid by the respondents as stated above.

In this petition, affidavit in reply has been filed by the respondents. The respondents have produced on record order dated 1st May, 1993 and the letter dated 9th June, 1993 and 3rd June, 1994. Learned advocate Mr. Munshaw appearing for the respondents has filed further affidavit in reply on 2nd March, 2000 and has also produced letter dated 22nd December, 1995, 22nd April, 1996, 23rd April, 1996 and other relevant letters of appointment. Learned advocate Ms. Shah has filed rejoinder to the affidavit in reply filed by the respondents on 29th January, 1996.

In this petition, learned advocate Ms. Shah has raised two contentions, one of which is that the calculation of back wages put by the respondent and paid in terms thereof is not proper and the petitioner is entitled to the back wages as per the calculations at annexure "F" page 34. Secondly, the services of the petitioner has been terminated in utter disregard to the provisions of section 25F of the Industrial Disputes Act, 1947 and, therefore, the order of termination is bad in law and is liable to be set aside and the petitioner is entitled to reinstatement with retrospective effect as if he has not been terminated.

As against that, learned advocate Mr. Munshaw has submitted that if the petitioner is having any grievance or dispute as regards calculation of back wages and if he feels that the calculation made by the respondents is not proper, then, the petitioner should approach the labour court under section 33C(2) of the ID Act, 1947. As regards second contention, as regards violation of section 25F of the ID Act, 1947, he has submitted that the petitioner is having remedy under the

ID Act before the labour court and the petitioner can challenge the said action. However, he has submitted that according to the information and knowledge of the respondent No. 3, the petitioner was employed by the ONGC earlier and, thereafter, the petitioner was employed in the Gujarat State Road Transport Corporation as a driver at Surat Depot and on the date of hearing, he pointed out that according to the officer who has remained present in the court, the petitioner is working as a driver in ST Corporation at Surat. These facts have not been disputed by Ms. Shah, the learned advocate.

In this petition, it is required to be examined as to whether the petitioner is entitled to full wages from the date of the award passed by the labour court till the date of reinstatement. Learned advocate Mr. Munshaw has not been able to point out any fact from therecord or any document to show that during this period, the petitioner was reinstated by the respondent. It is also required to be noted that by this court, in special civil application no. 1950 of 1991, by order dated 30th September, 1992 page 25, it was directed to reinstate the petitioner in service in pursuance to the award within six weeks from the dateof receiptof the order passed by this court in the said petition. It is also an admitted fact that inspite of that fact, the petitioner has not been reinstated in sernvice by the respondents. I am, therefore, of the opinion that the petitioner is entitled to full wages for the period from 11th December, 1990 to 15th July, 1992 from the respondents and said full wages arerequired to be paid on the basis of revisionof salary for the post of driver. In respectof the contention about any dispute in claim of amount of recovery for payment of 50 per cent of the back wages, the petitioner is having alternative effective remedy under section 33C(2) of the ID Act, 1947 and as regards termination of service also, the petitioner is having altelrnative remedy under section 2(A) read with sec.10(1) of the ID Act and this Court cannot enter into the disputed questions of fact while exercising extraordinary powoers under Article 226 of the Constitution of India. Therefore, one prayer is required to be granted and the restof the prayers are required to be rejected while reserving liberty to the petitioner to approach the appropriate forum in accordance with law for redresal of his grievance in respectof rest of the prayers made in this petition.

Accordingly, this petition is partly allowed.
Rule is made absolute accordingly with no order as to

costs.

In view of the above facts, the respondents are directed to pay to the petitioner full wages revised from time to time for the post of driver from 11.12.1990 to 15.7.1992 within one month from the date of receipt of certified copy of this order. As regards rest of the prayers, it will be open for the petitioner to approach the appropriate forum in accordance with law and it is expected that the same shall be decided by the appropriate forum in accordance with law.

Subject to the aforesaid observations, this petition shall stand disposed of with no order as to costs.

23.3.2000. (H.K.Rathod, J.)

Vyas